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8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 ADAM LERMA BARBOZA,   No. CIV-S-03-0573 MCE/GGH P

12   Petitioner,

13   v.   ORDER

14 TOM L. CAREY, WARDEN, ET AL.,

15   Respondents.
                                        /

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17   Petitioner, a state prisoner proceeding pro se, has timely

18 filed a notice of appeal of this court's September 15, 2005

19 denial of his application for a writ of habeas corpus. Before

20 petitioner can appeal this decision, a certificate of

21 appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P.

22 22(b).

23   A certificate of appealability may issue under 28 U.S.C.

24 § 2253 "only if the applicant has made a substantial showing of

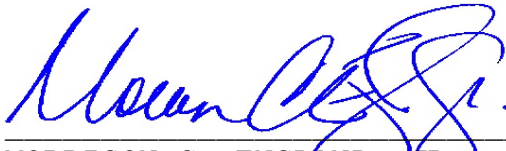25 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

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1 The certificate of appealability must "indicate which specific

2 issue or issues satisfy" the requirement. 28 U.S.C.

3 § 2253(c)(3).

4   A certificate of appealability should be granted for any

5 issue that petitioner can demonstrate is "'debatable among

6 jurists of reason,'" could be resolved differently by a different

7 court, or is "'adequate to deserve encouragement to proceed

8 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.

9 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).[1]

10   Petitioner has made a substantial showing of the denial of a

11 constitutional right in the following issue presented in the

12 instant petition: whether the sentence imposed violates the

13 Eighth Amendment's prohibition against cruel and unusual

14 punishment.

15   Accordingly, IT IS HEREBY ORDERED that a certificate of

16 appealability is issued in the present action.

17 DATED: October 14, 2005

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MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE

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24   [1] Except for the requirement that appealable issues be
specifically identified, the standard for issuance of a
25 certificate of appealability is the same as the standard that
applied to issuance of a certificate of probable cause.
26 Jennings, at 1010.

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